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# Res Gestae

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STUDENT NEWSPAPER OF THE UNIVERSITY OF MICHIGAN LAW SCHOOL

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April 12, 2005

Since 1950

Vol. 55 No. 16

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## Our Neighbor from the North: A Chat with Professor Pottow, Eh?

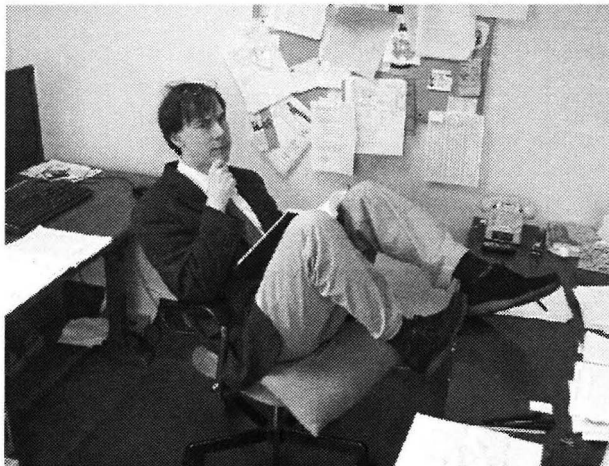
By Mike Murphy and Matt Nolan

**P**rofessor John A. E. Pottow is an Assistant Professor of Law at Michigan. He holds an A.B. in psychology, *summa cum laude*, from Harvard College, and a J.D., *magna cum laude*, from Harvard Law School, where he served as treasurer of the Harvard Law Review. Pottow has clerked for the Rt. Hon. Beverley McLachlin of the Supreme Court of Canada, and the Hon. Guido Calabresi of the U.S. Court of Appeals for the Second Circuit. He is a licensed attorney in Massachusetts and barrister and solicitor in Ontario.

Pottow practiced privately with a number of firms, including Weil, Gotshal and Manges of New York and Hill & Barlow of Boston. His practice focused on debtor representation in complex Chapter 11 bankruptcies and financial restructurings. Pottow assists in *pro bono* matters including co-counsel of a consumer bankruptcy appeal to the Supreme Court of the United States and lead counsel of a gender-based grant of asylum for an Afghan national seeking relief from the Taliban regime.

Pottow's research and teaching focuses on bankruptcy and commercial law with particu-

lar research interest in international bankruptcy. Pottow and Professor Mathias Reimann recently won L. Hart Wright Outstanding Teaching Awards last week for excellence in teaching at the Law School based on student nominations and voting.



JAEP: Speak! Demand! We'll Answer!

RG: (playing rock, paper, scissors to see who gets the office chair)

JAEP: Are you both lefties?

RG: Yes.

JAEP: That makes you both sinister.

RG: How did you get here, and why?

JAEP: I came to the U of M as a tenure-track faculty member – this is my first permanent faculty position. I came here

by way of private practice in bankruptcy and litigation. I practiced in Boston and New York, and took an interlude in Honolulu. Before I went to law school I worked for an investment hedge fund, and when I went to study law, I think I always did so with the thought in the back of my head that it would be an academic project for me, that I would be returning to the academy. I toyed with a PhD in psychology, what my first degree was in, but my late psychology mentor, Roger Brown, suggested law to me, which I took as a backhanded compliment about my psychology ability, but he was a great guy.

RG: Was Hawaii your first law teaching job?

JAEP: By accident, yes. My wife had a medical internship and I went as a tagalong spouse, and Hawaii found itself short-staffed by a surge in 1L admission. The dean of Hawaii asked if I wanted to teach 1Ls, I said I'd love to, and the rest as they say is history.

RG: What brought you to Michigan?

JAEP: Michigan was attractive to me, one, because it was a top-flight law

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## Res Gestae

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## Top Ten Tips to Exams

**By Lynde Lintemuth**

**H**ere's ten tips to law school exams, and one to grow on:

10. Get a good night's sleep (8 to 10 hours) in the 2 days before an exam. You probably won't be able to sleep well the night before the exam with all the adrenaline.

9. Don't eat too much before an exam. Stick to carbs instead of proteins, they are easier to digest, so you have more blood for your brain instead of your stomach!

8. Get to the exam site early! Running late adds unneeded stress, and those last two minutes of cramming will not save you.

7. Scout out the nearest bathroom prior to the exam. Think of it like exits on an airplane, except more important since the clock will be ticking.

6. Try to finish your outlines 2 days before the final so you have plenty of time to review the information.

5. Old exams and practice exams are your friends. Spend some quality time

with them to help direct your studying and exam answers.

4. BUDGET YOUR TIME! Leave time at the end to review your answer, there may be parts of it you do not want the professor to read.

3. DO NOT TRY TO REMEMBER THINGS RIGHT BEFORE THE EXAM!!!! Either you know it or you don't at that point. You will only freak yourself out by trying to remember two seconds before proctor says go.

2. ANSWER THE QUESTION ASKED! Read and re-read the question before answering.

1. Fight the urge and do not discuss the exam. Forget about the exam you just took and study for the next one. Don't forget to treat yourself (but don't get completely wasted, unless it's after your last exam.)

DON'T PANIC – it is just a test after all, and just like the song, "life goes on..."

*Loosely based on contributions from law school faculty and students.*

RG

**Res Gestae Presents:**

## The Big Lebowski

**Thursday, April 14**

**7:30 p.m.**

**100 Hutchins Hall  
FREE (and free food)**

**"And let's not forget, let's not forget, Dude, that keeping wildlife... uh, an amphibious rodent... for, uh, domestic, you know, within the city limits... that ain't legal either."**

# Asking About 'Don't Ask, Don't Tell'

By Karen Lockman

Upon learning that her significant other was terminally ill, Monica Hill requested a two year deferment from her position with the United States Air Force. Obligated to explain the nature of her relationship in her deferment application, Hill's request exposed that she was gay. Nine months after losing her partner to brain cancer, she was discharged from the military for violating the "Don't Ask, Don't Tell" policy.

Since the "Don't Ask, Don't Tell" policy came into effect in 1993, over 10,000 men and women like Hill have been dismissed from the military for revealing their sexual orientation. Comprised of statutes, regulations and memoranda, this complex policy has sparked intense debate over the merits of excluding gays, lesbians and bisexuals from military service.

Amidst the "Don't Ask, Don't Tell" controversy, a legal battle has also erupted over the Solomon Amendment. Enacted in 1996, this federal statute authorizes the Secretary of Defense to deny federal funding to any institution of higher learning that prohibits or prevents military recruitment on campus. Due to the massive threat it poses to essential government funding, the Solomon Amendment effectively compels all universities to support military recruitment on campus, regardless of the schools' recruitment guidelines and antidiscrimination policies.

Last Monday, Dean Caminker and Outlaws brought a diverse panel of legal professionals to Hutchins Hall to discuss the significance of the Solomon Amendment and the implications of the "Don't Ask, Don't Tell" policy.

Panelists included Kathi Westcott, Philip Pucillo, Eugene Milhizer and Aaron Belkin. Westcott is a litigator who works with individuals adversely affected by the military's policies, while

Milhizer and Pucillo are both professors at the Ave Maria School of Law. Belkin, a political science professor and director of the Center for the Study of Sexual Minorities in the Military at the University of California, Santa Barbara, joined the panel via satellite.

"What was great about this panel was that every participant brought a different piece of the puzzle to the table," said Outlaws Co-President, 2L Nadine Gartner. "Each person had a different perspective through which to describe these issues, and they each brought their own area of expertise."

## Solomon Amendment and FAIR Litigation

Professor Pucillo focused his discussion on the litigation of the Solomon Amendment.

In response to the enactment of the Solomon policy, law schools and law faculty formed the Forum for Academic and Institutional Rights (FAIR) and sued to enjoin enforcement of the Solomon Amendment. Ironically, FAIR centered their argument on the Supreme Court's 2000 decision in *Boy Scouts v. Dale*, which upheld the Boy Scout's discharge of a gay scout master on grounds that his employment was inconsistent with the mission of the organization.

As the Court recognized the Boy Scouts' first amendment right against intrusion on its "freedom of expressive association," FAIR argued that the Solomon Amendment interfered with the law schools' message opposing discrimination. In a 2-1 divided panel, the 3rd Circuit recently declared the Solomon Amendment unconstitutional on these grounds.

In a surprising twist, Pucillo expressed his agreement with the unconstitutionality of the Solomon Amendment. "Law schools are supposed to infiltrate students with a sense of justice," he said.

"Certainly, at Ave Maria, a Catholic institution, we understand that we are teaching students to be more than how to just be a good practitioner."

"We had no idea that Professor Pucillo would change his mind on the constitutionality of the Solomon Amendment," said Gartner. "The panel didn't come out as balanced among competing viewpoints as we had planned, but we very much appreciated Professor Pucillo's honesty."

## Potential Negative Repercussions?

Whether or not the Supreme Court will weigh in on Solomon's constitutionality is still yet to be decided. Still, there is question about what kind of effect this will have on the military's broader policies. Drawing on his own experience as a career judge advocate in the military, Milhizer warned of potential negative repercussions that could result from repealing of the Solomon Amendment.

Milhizer expressed concern that if the Solomon Amendment were repealed, the military in general and the JAG Corps would become less diverse and more insular. He indicated that because the military will be less likely able to recruit at law schools in the "blue states," there will be an increase in self-selection of conservative members.

Furthermore, he does not believe that the Solomon litigation will impact the military to change the "Don't Ask, Don't Tell" policy. "It is inconceivable that the army will change its broad policy because of the impact on JAG accession. That would be the tail wagging the dog!"

Milhizer articulated that, if anything, the repeal of Solomon would be a negative step toward the end of "Don't Ask, Don't Tell," as it would likely increase the number of JAG Corps members that are less sympathetic to those wanting to lift the ban on gays in the military.

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# Celebrating the Life of John Pickering, '40

By Tom Rogers

**J**ohn H. Pickering, '40, a distinguished appellate lawyer and a founding partner of Wilmer, Cutler and Pickering, passed away last month. This article originally appeared in the Fall 2004 issue of the *Law Quadrangle Notes* and is reprinted with permission.

The name of John H. Pickering, '40, weaves through the last 60 years of American legal history like a weaver's pattern stitch. When President Harry S. Truman seized U.S. steel mills as part of the World War II war effort, the young Pickering was there to successfully challenge him. When Congressman Adam Clayton Powell challenged Congress' power to oust him for extra-constitutional reasons, Pickering was there (in a losing effort) to support Congress. During the Civil Rights era of the 1960s, when Mississippi business leaders challenged an NAACP boycott as restraint of trade, Pickering was there to ensure that the boycott was protected as the exercise of free speech. In the 1990s, when the issue of physician-assisted suicide reached the U.S. Supreme Court, Pickering was on the front lines again, in both *Washington v. Glucksberg* and *Vacco v. Quill*. And when critics challenged the University of Michigan Law School's use of race as a factor in making admissions decisions, Pickering was there on the winning side.

(You could say that Pickering started at the top. The first case he tried was before the U.S. Supreme Court. But that story can wait until later.)

So when leaders at The American Lawyer magazine scanned the legal landscape for candidates for their first Lifetime Achievement in the Law Awards, the name of John H. Pickering emerged immediately. "Our selection criteria were simple," editor Aric Price explained in his column last March. "The editors looked for lawyers with sterling records in practice who also played important roles as

citizens. We wanted exemplary people, those who by work and deed can serve as role models for younger lawyers. And we limited this honor to lawyers at or near the end of their careers. Most of those we'll honor continue to work; we looked merely for those who had cut back from, say 2,750 billables to just 1,500."



American Lawyer initiated the awards as part of its 25th anniversary celebration, and presented them at a gala banquet in Washington, D.C., last April. Pickering and his longtime partner Lloyd N. Cutler won two of the awards. Pickering, Cutler, and elder statesman attorney Dick Wilmer established Wilmer Cutler Pickering in 1962 in Washington, D.C. and built it into an international firm that is widely respected for the skill of its lawyers as well as for its policy of devoting substantial portions of its lawyers' time to pro bono cases. Last June the firm merged with Boston powerhouse Hale and Dorr and now operates as Wilmer Cutler Pickering Hale and Dorr LLP.

Wilmer Cutler Pickering was one of only two firms with two attorneys among the American Lawyer's 12 Lifetime Achievement winners. Winners Newton N. Minow and Howard J. Trienens both are with Sidley Austin Brown & Wood.

The other eight winners were: William T. Coleman Jr., of O'Melveny & Myers;

Joseph H. Flom, of Skadden, Arps, Slate, Meagher & Flom; Alexander D. Forger, of Milbank, Tweed, Hadley & McCloy; Robert D. Raven, of Morrison & Foerster; John M. Rosenberg, of the Appalachian Research and Defense Fund of Kentucky; Frederick A.O. Schwarz Jr., of Cravath, Swaine & Moore; Robert S. Strauss, of Akin Gump Strauss Hauer & Feld; and the Hon. Patricia Wald, retired chief judge of the U.S. Court of Appeals for the District of Columbia Circuit.

"These are lawyers who gave meaning to the profession's values, lawyers whose careers are a challenge to those who follow," according to Amy Vincent, who profiled the winners in last May's special anniversary issue of *The American Lawyer*.

For Pickering, the award is the most recent of many. Were he a military man, his uniform would be weighted with medals.

In addition to his Lifetime Achievement Award this year, the ABA's Human Rights magazine honored him in April as a Human Rights Hero. His law partner John Payton noted in his tribute that "for more than 60 years, John H. Pickering has devoted his career to serving others with integrity, generosity, and civility. In addition to being a distinguished appellate lawyer, renowned for his insightfulness and superlative skills as an advocate, John's passionate pursuit of equal justice for the underprivileged and underserved, including the elderly, has given voice to countless numbers who would otherwise have gone unheard."

Pickering himself aptly summed up his viewpoint in a 1994 interview for the District of Columbia Bar's "Legends in the Law" series:

"In reflecting on a lifetime, I think there's always the temptation to ask,

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'What if?' What if I'd gone back to New York and made partner? Would I have made more money? Yes, I would have made more money. Would I have had as much fun? No, definitely not.

"I've had the opportunity to play a substantial part in the creation of a major law firm, and I've been able to do a lot of things for the Bar, for court reform, and for the Michigan Law School. That has given me a feeling that I've done something with my life other than just service the interest of clients."

Dean Evan Caminker has had the good fortune of experiencing Pickering's passion for helping others through legal reform first hand - not just through Pickering's work for the Law School, but 15 years ago when Caminker was a young associate at Wilmer, Cutler & Pickering.

"One of my first projects at the firm was to assist John in writing an amicus brief in the landmark 'right-to-die-with-dignity' case involving Nancy Cruzan," Caminker explained. "Learning to draft a Supreme Court brief from such a master advocate was a memorable experience. Of course John taught me a great deal about first-rate brief writing; but much more significantly he illustrated by example the possibility and importance of marrying reason with passion, and of dedicating one's energy and talents to causes that speak to the heart."

Pickering's attachment to the Law School is consistent and well-known. He delivered the commencement address here in 1992. He helped organize and launch the Law School Fund in 1960, was a charter member of the Law School's Committee of Visitors when it was organized in 1962, and chaired the School's development committee from 1973-81. In the mid-1990s his firm established the John H. Pickering Scholarship.

He enjoyed life as a law student, and afterward moved to New York City to practice with Cravath, de Gersdorff, Swaine & Wood, where he had worked as a summer associate. He quickly found

himself working on the "Black Tom" case that involved claims from Germany's destruction of the Black Tom terminal in New York during World War I.

Pickering expected to remain in New York as a corporate lawyer, although "I didn't know what that meant, but that's what I was going to be." In 1941, however, he got the offer that would alter the course of his life - to clerk for U.S. Supreme Court Justice Frank Murphy, '14, a fellow University of Michigan Law School graduate.

"Justice Murphy had a great influence on my career," according to Pickering. "He was a firm believer in protecting the rights of the individual and protecting the rights of the minority against the tyranny of the majority."

One of Pickering's first directives from Murphy was to look for an opportunity to acknowledge error and eventually reverse the justice's holding in *Minersville v. Gobitis*, in which he had joined the Court majority in ruling that a Jehovah's Witness child could be expelled from school for refusing to recite the pledge of allegiance and salute the flag. Eventually, in *West Virginia v. Barnette*, the Court gave its blessing to the individual's right to refuse to say the pledge of allegiance because it offends his religious beliefs.

There is no higher peak to climb in American jurisprudence than to reach the U.S. Supreme Court. Pickering is no stranger there, and has spent some 60 years helping to shepherd cases that are significant to him. Asked once to identify his "favorite cases," Pickering quickly cited issues that had made it to the U.S. Supreme Court.

"Looking back, I'd say the cases I've enjoyed the most have been those that have some real constitutional significance," he told his "Legends in the Law" interviewer. "One was the steel seizure case which overturned President Truman's seizure of the nation's steel mills. Another was *NAACP v. Claiborne Hardware*, which Lloyd Cutler argued and I worked on the brief [defending the

NAACP boycott]. . . . We took the case to the Supreme Court, where we prevailed. The Court held that the boycott was not an antitrust violation, but a permissible exercise of economic speech.

"I also helped represent the U.S. House of Representatives in the expulsion of Adam Clayton Powell. In that case I might have preferred to be on the other side. That's one thing the public doesn't fully understand about lawyers. You should not turn down a case just because you may have some sympathy for the other side. . . . I did not have any such problem in the Adam Clayton Powell matter. He had sued to get his seat back after he had been expelled from the House. We won the case in the District Court and in the Court of Appeals, but we lost in the Supreme Court, which held that Congress is restricted to the three qualifications stated in the Constitution when it judges qualifications of members. Those three qualifications are age, citizenship, and residency. That's it. I think the Court was right in that ruling despite our respectable arguments to the contrary."

And that first Supreme Court case?

"That was in 1946. I'd just been mustered out of the Navy, and in those days when the Supreme Court needed to appoint counsel for an indigent they would use former law clerks. One Saturday afternoon my phone rang at home, and the deputy clerk said, 'John, the Court would like to appoint you to represent the defendant in a mail fraud case. Do you agree?'"

"Well, I couldn't have said no even if I'd wanted to. So I argued my first case in the Supreme Court. I was brought back to earth the following week," he continued, his touch of humble humor inescapable. "My second court appearance was a traffic case in the old municipal court. I defended a chauffeur on a change of lane violation - and I lost."

*Tom Rogers is the Editor of the Law Quadrangle Notes. E-mail comments about this article to [rg@umich.edu](mailto:rg@umich.edu).*





# Environmental Law Society Spurs Global Warming Debate

**Submitted by  
Jessica Greenston**

What do polar bears, coal, coral reefs and cars have in common? The Environmental Law Society and the National Wildlife Federation hosted a special speaker series a few weeks ago addressing global warming. The series featured environmental litigators, an executive from Ford Motor Company, and academic speakers discussing the science and politics of global warming.

Although the speakers had different perspectives on global warming, they all agreed that global warming is happening, humans are contributing to it, and corrective action is needed. They agreed that the real issue is "when and how should we act to solve the problem?"

Professor Dan Bodansky from the University of Georgia, former consultant to the United Nations in the area of climate change policy, urged the audience to focus on domestic policy. From his perspective, the dream of U.S. involvement in the Kyoto Protocol is dead. Bodansky feels the focus should be on taking domestic action like the proposed McCain-Lieberman legislation establishing a national cap-and-trade emissions program. Bodansky's call for U.S. Congressional action was reinforced two days later in the series by Professor Parson's statistic that about 30% of all carbon dioxide emitted from human activity globally comes from sources in the US. Parson also presented different models correlating levels of atmospheric carbon dioxide concentrations and global temperature. It is predicted that global temperatures could rise by 10.4° F by 2100 if no action is taken. Parson noted that even if action is taken, heat-trapping gases remaining in the atmosphere have a long lifespan and will continue to seriously warm the planet for the next several hundred years.

The litigators presented inventive and diverse ways of using existing laws to combat climate change. Brent Plater of the Center for Biological Diversity petitioned to list the polar bear as an endangered species under the Endangered Species Act. Polar bears may become extinct by the end of this century due to global warming. If polar bears are listed, any federal action that "may affect" polar bears, including activities that increase global warming, must be modified to reduce the adverse impacts to the species. Noah Hall of the National Wildlife Federation shared a more cheerful story. Hall said his organization used the National Environmental Policy Act, an administrative law which mandates government agencies to consider the environmental impacts of their actions, to stop a train project from going forward that would have resulted in the burning of coal in the tons.

The remaining speakers overviewed the current federal regulatory scheme on climate change, or rather, the lack thereof. Professor Hoffman from the Michigan Business School discussed how businesses are being adversely impacted by not knowing the format of future regulation. Businesses want certainty. Companies in the United States are operating in an uncertain environment because the threat of global warming is sufficiently understood: domestic regulation in some form is inevitable, yet there is no indication of what form this will take. He suggested that businesses should examine their operations and create proactive management plans to ensure that they can meet the burgeoning world of energy efficiency.

John Bozzella, Vice President for Public Policy and Government Affairs at Ford Motor Company, put forth Ford's plans to significantly reduce greenhouse gas emissions. In the course of doing so, he identified the inherent conflict of interest such reduction entails. Bozzella lighted

the company's new hybrid SUV, the Ford Escape, and other hybrid models to be released in the next few years. He discussed the company's efforts to reduce emissions at the factory level through energy conservation. Bozzella discussed the root of the problem: energy efficient vehicles are expensive to produce and SUVs, the dirtiest passenger vehicles, are the most profitable.

Where do we go from here? While the federal government sits on the fence endlessly debating the answer to this question, states are attempting to fill the void. Simon Wynn, an Assistant Attorney General at the New York Attorney General's Office, discussed a pending public nuisance suit that eight states and New York City have brought against five of the largest Midwestern utilities. The suit claims that power plants' carbon dioxide emissions accelerate global warming which harm these states in the form of increased flooding, loss of coastal property, increased spread of infectious diseases like malaria and an increased number of heat-related deaths.

Echoing the need for state and local action, Mike Noble of Minnesotans for an Energy Efficient Economy urged the student audience to get involved. He noted that, while it was largely our parents' generation that got us into the global warming problem, ours must take the world out. He implored students to come up with inventive ways to spur the energy industry away from fossil fuel combustion and move towards cleaner, renewable technologies. The problem is urgent - Noble said that "we need to turn around now, make a real revolution."

More information on the series speakers and global warming can be found on the ELS website at:

[students.law.umich.edu/els/](http://students.law.umich.edu/els/).



# How to Survive Law Firm Rejection

**Submitted By Christine Gregory**

**S**o you had an interview at XYZ firm but didn't get an offer. But you thought the interview went well, and you left feeling like you had every reason to believe that an offer was forthcoming. Did you do something wrong?

In most cases, the answer is no. The reality is that many hiring decisions are based on intangible factors over which you have no control. Early in your career (especially as a 1L) you will get far more rejections than offers. But you can turn those rejections into resources and score a great job offer. Think about it: even though you didn't get an offer, you've just met some key people who have the power to influence hiring decisions. Taking the following 3 steps can help you work your rejection into your advantage.

**Step 1 – Feeling like a reject? Get over it.** The worst thing you can do is write off what is potentially a great job opportunity

just because you didn't get an offer. If deep down inside you still want to work at a specific firm, don't give up. Rejection hurts, but the sooner that you are able to get over the emotional aspects of being told "no," the better prepared you will be to have a professional conversation about getting feedback on how you can improve your candidacy.

**Step 2 – Get the feedback.** Yes. Getting feedback on your rejection could be a potentially uncomfortable conversation, but it doesn't have to be. If you made a connection with one or two of the people with whom you interviewed, call them. Don't come off as confrontational. And don't use this as an opportunity to investigate the reasons why you didn't get the offer. Instead, view it as an opportunity to get advice on how you can strengthen your interviewing skills or background experience in a way that would make you a more attractive candidate for the firm. If you handle this conversation well you will score points for being mature and handling a "tough"

conversation with grace and finesse – an important skill for an attorney.

**Step 3 – Stay in touch.** This is very important and few do it well. Whether you end up going overseas to a non-profit organization for your 1L summer or to work at another firm next door, send an email or postcard to the folks at XYZ firm to let them know what you are up to. Most importantly, demonstrate that you are busy doing interesting and challenging work elsewhere – but that you continue maintain an interest in the firm. They will be impressed with your focus and commitment. Continue to stay in touch over time. You don't want to be a pest but if you are thoughtful about maintaining ties, you can develop an advantage over other applicants when pursuing a position at XYZ firm as a 2L – because this time you'll know someone.

*Christine Gregory is an Attorney Advisor in the office of Career Services. E-mail comments about this article to [rg@umich.edu](mailto:rg@umich.edu).*



# An Open Letter to Our Community: What We're Not Talking About

**Submitted By Nadine Gartner**

**L**aw students rarely need to be told to speak up, but one topic has eluded our conversations throughout the halls of Hutchins: mental health. Despite the outside world's nascent interest in this issue, as evidenced by congressional panels, media coverage, and celebrities' endorsements of anti-depressants, Michigan Law School has yet to engage in a meaningful conversation about it.

Over my past two years at the Law School, I have interacted with numerous

classmates who grapple with depression. I have also witnessed numerous others who, although not identifying with the word "depression," sleep most of the day, drink heavily, or become recluses.

Lawschool is a difficult environment that may stem or intensify one's symptoms of depression. The stresses from academic and extracurricular responsibilities, the competition felt among students for journal positions and summer job offers, and a social setting that revolves around alcohol characterize such an environment. The long, grey months of winter exacerbate these factors and may even provide students with

excuses for sleeping through class or refusing to go out with friends.

The University offers free Counseling and Psychological Services ("CAPS") to all students, but few law students seem to be aware of this resource. Even upon learning of it, many choose not to seek its services because of fear of what others may think, nervousness about balancing emotional issues with law school responsibilities, or cultural reasons. Several that do know CAPS and use it have been dissatisfied by it, but they do not know where else to turn.

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# Playground Choice of Law: A Farewell to Law School

By Liz Seger

Last week we took my eight-year-old, my nine-year-old, and one of his classmates out for a sunny Sunday drive, culminating in fish & chips for everyone at the Dexter Pub (Kids 12 and Under Eat Free on Sundays). If you've ever been there, say, on a Saturday evening after disc golf with your stoner friends, you may have trouble picturing the place full of kids. If you've been there before and you're male, or you were there with the kind of male who freely divulges the secrets of malehood (e.g., pledge week hijinks, jokes that compare fat girls to mopeds... ahem), you may know that the men's bathroom at the Dexter Pub features several, umm, 'pin-up posters', many of them modern classics. You know, Anna Kournikova playing, uh, tennis, or, Jenny McCarthy (back when she had some meat on her bones) leaning really really far forward (as if maybe she dropped an earring on the carpet while she was making out with you on your leather couch as the two of you were enjoying a romantic afternoon of football watching and beer drinking), and of course everybody's favorite, the girl wearing nothing but duct tape. Having no first-hand experience of these posters in this particular setting, I had forgotten all about them, until my son and his friend announced they were going to the bathroom, and The Boyfriend got a look on his face that can only be described as two parts Here Comes a Rite of Passage and one part Evil Grin. "I'm going with," he said. "I gotta see their reaction."

The Men returned from the bathroom in silence. They settled back into the booth and sipped their drinks. And then my son, trying to suppress a slightly embarrassed smile, said, "I bet they have pictures of men in the girls' bathroom. Don't they?"

"No," I said, "we don't get anything like that. We just get little vases with flowers in them, and maybe a print or two of some wildflowers."

"Why not? Why don't they have the same things?"

"Well, I guess they think women don't want to see pictures of hot men while we go to the bathroom. They think we'd rather see wildflowers," I ventured.

My son looked perplexed. "But that's not fair!" I was so proud. Clearly my non-sexist childrearing tactics were paying off. Clearly, being the son of a law student, the son of someone who cares about Justice and Equality, was having a positive effect on the boy. He had responded to his first(?) (okay, I'm kidding myself...) encounter with extra-soft porn by querying the fairness of the situation, and in a way that did not dismiss female sexuality!

But he wasn't finished... "We want wildflowers, too!"

Okay, so maybe he's not so much indoctrinated as pre-pubertal. But that's not to say law school hasn't affected my kids plenty. And I don't just mean the time they came to Critical Race Theory and heard not just a grown-up but a teacher say the n-word, the b-word, and, er... the k-word. (None of these were new to them. They do listen to a lot of rap, after all, and I believe every little Jewish kid should be taught the k-word upon entering school, just in case, so they'll know when to dish out a deserved bloody nose. But they still took the opportunity to get away with saying all of these words on the way home, under the guise of 'thoughtful questions' about the class, in which they 'merely quoted' the professor, a tactic they're also fond of using to 'clarify' the 'meaning' of Talib Kweli and The Roots lyrics... but I digress.) For the most part, they've found the classes they've attended to be dry and hard to follow – no accounting for taste, I guess.

But somehow, as my style of argument has developed and grown, so have theirs. As I prepped for oral arguments way back in Legal Practice, or explained what I was studying over the dinner table, or talked (abstractly, of course) about the cases I was handling in clinic, and what you can and can't do under the law, for yourself or your client, in a brief, in a courtroom... somehow, they became little lawyers. Their imaginary country, invented when they were two and three, used to be called 'Pretendland.' Now it's called Preet, and comprises an elaborate network of stuffed animals and plastic figurines with complicated family and business relationships, its own currency and identification documents, a well-developed judicial system, and even, I've come to suspect, its own rules of logic.

Of course, many aspects of Preet culture are adopted directly from Kid Culture in general – that body of knowledge that is never taught parent-to-kid but only from one kid to another, on the playground. Knowledge, like how to play 'jinx' (I grew up in the 'you owe me a Coke' part of the country, but they're 'you can't talk until I say your name' folk in these parts, it turns out) and the various methods of arbitrating disputes and choosing leaders. It's a strange moment the first time your kids, these little helpless babies who used to only know the words you'd taught them, and who had never had an experience you weren't there to share, break out the 'bubble gum, bubble gum, in a dish' or 'eeny meeny miney mo.' Last night, my son, who can never solve a dispute with his sister without a lengthy, whiny battle, was playing a snowboarding game on the PS2 with a friend's daughter. He wanted to race, but she wanted to play in 'show off' mode. For about five minutes they went back and forth:

**Continued on Next Page**

## CONTINUED from Previous Page

"Race."

"Show-off."

"Race."

"Show-off."

I threatened to turn off the game

. "Race."

"Show-off."

I threatened to send them to bed.

"Race!" "SHOW-OFF!"

Suddenly, my son said, "Rock paper scissors."

His opponent answered, "First one to get three in a row."

"Two out of three."

"Okay," she said.

And they flashed their rocks and papers and scissors like old pros. The dispute was settled in thirty seconds, and everyone was happy to abide by the results. I think this is universal. Kids who whine and moan that you're sending them to bed at their bedtime, the same bedtime they've had for a year and should be expecting by now, and that has all the weight of tradition and public policy behind it, will give utter respect to a completely arbitrary system of adjudication, as long as another kid invoked it.

This has all gotten me thinking about the nature of legal education. With four weeks until graduation, four papers to write, at least forty more hours of work to do for the Voting Rights Initiative, and, oh yeah, a job to find, I have a lot of time to sit around and muse about what these three years and have taught me. And, much like my kids, most of what I've learned here didn't happen in classrooms, nor in clinic, nor even in my summer jobs. The real education we get in law school has a lot more in common with learning to play Rock Paper Scissors than it does with learning a typical trade: we aren't learning skills and facts and cases and rules, here. We'll have Westlaw for that. We're here to learn the culture of lawyering, and it doesn't turn out really to reside among lawyers, any more than the culture of kickball and jinx and hide and seek 'reside' in our adult world, though we all know the rules. You can't learn it in a law firm – that's just the acting out. Not only the firms, but the courts, the

campaign trail, the legislature, and on and on and on, do not operate in their own independently evolved cultures, but only play out what we're learning here. Yes, guys, the way we relate to each other, the cases we turn into Halloween costume subjects, the jokes we tell, the fights we pick on lawopen, the stupid things that come out of our mouths when we're trying to sound brilliant about the law – these will be the meat of Legal Culture for the next twenty years. The aspects of law school life that now feel like afterthoughts will turn out to be our secret handshake.

And while we – this entire generation of law students – will share a common scheme, our regional and hierarchical dialects will be felt. The culture of a top-ten law school will reveal itself, as we move out into the world, to be something apart from that of the lower tiers, and the Culture of Michigan Law in particular will be differentiated further yet. I don't know how. I don't know how it feels at NYU or Chicago. I don't know how I'll know

the difference, but I know I will. I'll be at a cocktail party, and three minutes after I've met someone I didn't even know was a lawyer, I'll hear myself say, "Hey! You went to Michigan!" And his face will light up, and we'll carry on like old friends. Or I'll be in court, and opposing counsel will say something that doesn't just sound lawyerly to me, but stunningly and definitively Michigan Lawyerly. During the next recess we'll hash it out in the hallway, in a kind of Rock Paper Scissors of legal argument – we'll cut to the chase, and we'll trust each other just enough. I'll know it when I hear it, and so will you. This is our playground, and while we didn't all get along, and we didn't always play nice, and sometimes it could've been better, it's our playground, and it operates under our rules.

And I'm gonna miss it.

*Liz Seger is a graduating 3L. E-mail comments about this article to rg@umich.edu.*



## Egan and Kilpela Win Moot Court



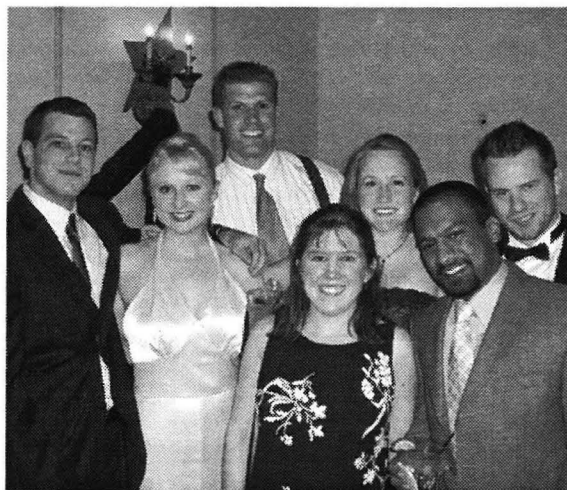
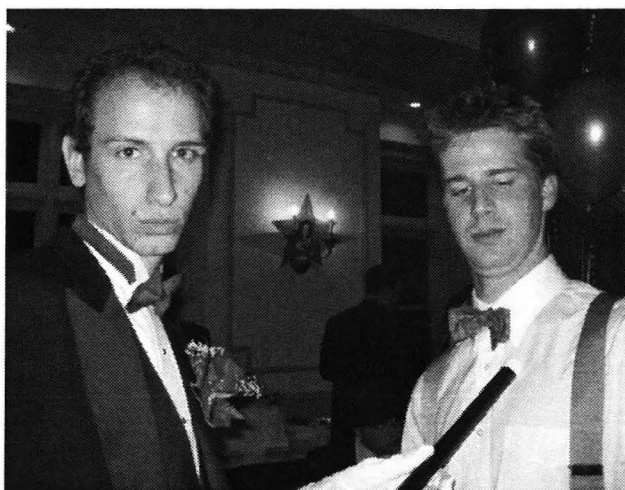
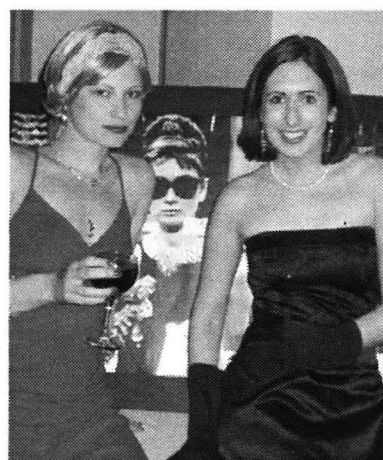
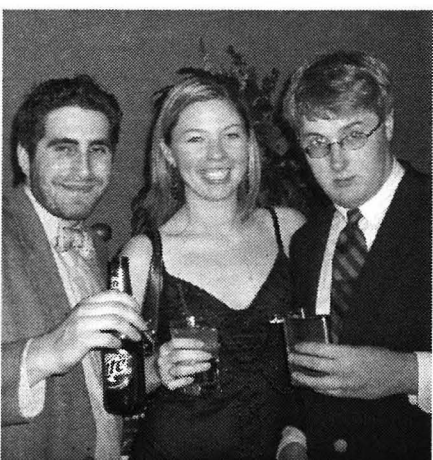
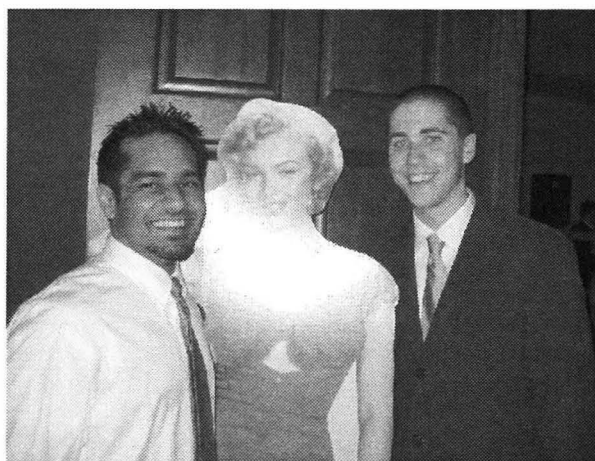
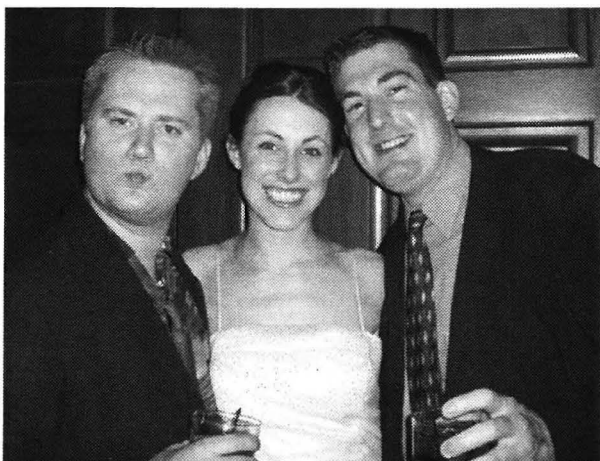
3Ls Patrick Egan and Edwin Kilpela, left, won the 81st Henry M. Campbell Moot Court competition on March 31. The team also won Best Memo and Kilpela won Best Oralist. The runners-up, 2Ls Joshua Deahl and Michael Pearson, are pictured at right. Photo by Gregory Fox.



*Courtesy of Diana Geseking and Ming Shui*




## Stars Twinkle at Law School 'Old Hollywood' Winter Formal (Prom)





# Get Your Dream Job in Your Dream City

## Submitted By the Office of Career Services

 On March 29, 2005, Carol Kanarek '79, a renowned consultant on the New York City job market, shared with students her suggestions for getting a job in the Big Apple. Although her comments focused on New York City, they are applicable to a job search in any city.

Ms. Kanarek outlined three "tests" a student has to pass in order to find employment. They are: 1) interest, 2) aptitude, and 3) geography.

### The Interest Test

To demonstrate interest in a particular law firm, a student must show general interest in one or more of the firm's core practices. Indicating that you have an interest solely in one of the firm's smaller practice areas will not get you hired. Ms. Kanarek advised students not to be too specific about the practice area they desire. Instead, get an offer from the firm first and then talk about practice areas. As a corollary, do not give an interviewer the impression that you are more interested in the firm's pro bono work than in its day-to-day practice.

How does one find out what type of law a firm really practices? A useful resource tool is the NALP Directory of Legal Employers which can be found at [www.nalpdirectory.com](http://www.nalpdirectory.com). This resource will tell you the number of lawyers in each of a firm's practice areas. If, for example, you want to practice real estate law in a five hundred lawyer firm, how many of those attorneys do that type of work? Also look at the firm's website. By no means should that be your only avenue of research because many firms say they practice every type of law.

Another valuable resource is American Lawyer, available in the OCS Library and on line at [www.americanlawyer.com](http://www.americanlawyer.com). This magazine publishes reports on dif-

ferent practice areas and ranks law firms too. For instance, the cover story of the April 2005 issue is about "the biggest deals of 2004, and the firms that did the most." This issue also contains a listing of the firms with the top corporate practices in 2004. Previous issues provide a wealth of information, such as the Litigation Boutique of the year and the four runners-up.

Perhaps the best source of information about law firms is the students who have worked there. It's crucial to talk to 2L's and 3L's about their experiences. (You can find where UM law students have worked for the past two summers on the OCS website at: [www.law.umich.edu/currentstudents/CareerServices/jobsearch.htm#summer](http://www.law.umich.edu/currentstudents/CareerServices/jobsearch.htm#summer)) Furthermore, mention your discussions with other law students when interviewing. Doing so shows you've done more homework than most students and also that you have a genuine interest in the firm.

### The Aptitude Test

Showing aptitude involves more than just your GPA. There are a number of factors that can help you demonstrate aptitude. Among them are: your undergraduate institution and your major, the classes you're taking or planning to take in law school, and moot court or law journal experience. The latter two are strong indicators of your ability to research and write. Additionally, receiving Honors in Legal Practice sends the same message.

Moreover, there are a number of intangible factors that can help you. They are: demonstrating a high level of energy, the ability to work long hours and to multitask, exhibiting professional maturity and stellar organizational skills. Excellent Legal Practice skills of research, writing, and analysis are big pluses. Make sure you volunteer examples of these intangible skills when interviewing.

Not to be overlooked is the ability to project a high level of energy and confi-

dence. Employers constantly tell the OCS staff that these two qualities can be the deciding factors when making difficult decisions about which students to invite for callback interviews. Don't change your personality into something you're not, but be able to "sell yourself." Stay in "sell mode" until you have an offer. OCS is happy to work with students during the summer in order to develop and demonstrate these qualities.

### The Geography Test

How do you demonstrate a commitment to a particular city? It's easy if you grew up there, went to school there, or worked there for some time. If not, there are ways to make you a more viable candidate. One suggestion Ms. Kanarek made is to mention your friends or significant other who are working in the city. Talk about fellow students who have worked for that particular firm or in that particular city. If it's true, volunteer that you are interviewing in that city only. Interviewing in more than two cities makes you look flaky and undirected.

In addition, consider joining the state or city bar association where you want to practice. The cost to law students for joining this type of bar association is usually \$25 or less. Being a member of a particular bar association is something you can note on your resume and bring up in an interview. Similarly, if you know what city you want to practice in and sign up for that state's bar exam, you've demonstrated a strong commitment to that area.

The Office of Career Services will be open all summer to help students polish their resumes and make intelligent decisions about selecting firms and bidding. Due to the volume of emails we receive in OCS, emails are not the best way to communicate with us. Instead, it's best to call 734-764-0546 to schedule a phone or in-person appointment.



**REMINDER:**  
**APRIL 22, 2005**  
**IS THE DEADLINE FOR RECEIVING FREE**  
**TAPES OR CDS WHEN YOU ENROLL IN**  
**THE PMBR WORKSHOPS FOR THE JULY**  
**2005 BAR EXAM.**

**5 WAYS TO ENROLL:**

**MAIL:** Postmarked by April 22<sup>nd</sup> is sufficient

**PHONE:** 800-523-0777 or 800-315-1735

**FAX:** 310-394-4003 or 215-925-6230

**ONLINE:** [www.pmbr.com](http://www.pmbr.com)

**RETURN TO A STUDENT REP.:**

Linda Samples (via Pendaflex)

There are two Ann Arbor 6 day workshops:

May 9-14 and May 16-21

Ann Arbor 3 day workshop: July 18,19,20

**Good luck on the bar exam!**

PMBR is looking for student representatives for the 2005-2006 school year! Contact [kathypmbr@msn.com](mailto:kathypmbr@msn.com) for more information!





# Computing My Life Happiness Average

By Matt Nolan

I'm drained.

2L has taken a lot out of me, and I'm ready to admit that. From interview week back in August, through fall classes and the campaign, frenzied holiday trips over a too-short break, bowling, writing for the RG, reading assignments that would make Jefferson blink, apartment renting, apartment shopping, and everything else in between – I need a vacation.

I've written a lot of different columns in a lot of different manners and tones this year, although I'm sure the incendiary ones will be remembered much more vividly than my essays on Michigan sports and getting the most out of law school. So be it. Right now I've got two things on my mind, so I'm going to write about them: finals, and their unpleasant position within my favorite month, April.

Why is it that I always wait until the end of the term to learn everything that my professors have been trying to teach me all semester? I've done this enough that I should know it's going to make the end-of-semester workload insanely heavy, that it's going to put me into a bad mood some of the time, and that I won't likely learn it as well as I would have. Despite this knowledge, I dive back in with the same approach term after term after term.

My subconscious has figured out that this strategy is not all bad. Otherwise, why would I still do it? My guess is that many of you do the same thing. In an effort to understand and stress less about it, I think I've figured out part of "why."

My theory is mitigation. Even without casebooks, life stinks plenty in January, February, and even some in March. The weather is dreary, campus life is less than it was in the fall, there aren't any Michigan Football games to break up the

pattern – to spend extra time studying during this period and not make some fun would be torturous, if not tortious. I spent these months trying to find poker games, traveling to visit friends, buying new video games, and, yes, taking care of details for the summer. This left me a huge workload to synthesize the semester in April. Looking back, that isn't all bad.

April, after all, dominates. The other eleven months can't hold a candle. April holds the Final Four, the beginning of Cubs season, concerts, bowling playoffs, the end of classes, good weather, and the beginning of golf season. What could be better? My subconscious has me convinced of that adding workload to April can't make April worse, but adding fun to January, February, and March can make them better.

Does it stink to be inside studying while the weather's great? Oh, yes. At the same time, though, learning the law really can be entertaining (yeah, yeah, go ahead and snicker, but Bankruptcy is a lot more interesting than it sounds!). Having Dominick's and the law quad in the sun for study breaks makes it a lot more bearable than snowstorms would have. April would be an A+ without the cramming, but is a solid A- even with it. And not overworking myself in the other three months this term probably made

them good Bs instead of C's and C-'s. If quality of life over a four month span could be measured by an equivalent of GPA, we could call it a "Life Happiness Average" (LHA). The only logical conclusion I can come to is that procrastination has increased mine.

While the year definitely took a lot out of me, I wouldn't be honest if I didn't admit it added a lot, too – I think most of us would say we've grown during the year, whether 1Ls, 2Ls, or 3Ls. Now that April and all of its benefits are here, we should be recharging while making the final push – and with summer on the horizon, I guess maybe we're not too drained after all.

Good luck with finals to all, have a great summer doing whatever it is you're doing, and I hope both your GPA's and LHA's are to your liking.

*Matt Nolan is the Executive Editor of Res Gestae. For the record, if he's ever in a persistent vegetative state Matt would like his end-of-life decision to be made by anyone except for (Michigan Football Defensive Coordinator) Jim Hermann. He would like his mortal remains to be cremated, put in a Ralph's coffee can, and committed to the bosom of the Pacific Ocean which he loves so well. E-mail Matt at [mjnolan@umich.edu](mailto:mjnolan@umich.edu).*

RG

Res Gestae's First (and last) Fundraiser of the Year:

## iParty

Thursday, April 14, 9pm-1am

Heidelberg Upstairs

215 n. main (on main street near ann street)

**Take Control: \$10 gets you 10 minutes during which your iPod dominates the dj booth**

E-mail Steve at [sboender@umich.edu](mailto:sboender@umich.edu) for details

# Dr. Strangelove, Esq: How I Learned to Stop Worrying and Love the Undergrads

By Mike Murphy

**A**nother year done gone. And as I matriculate (look it up, you sick bastards) I feel a larger disconnect from the undergraduates. When I first got here, I loved having them around for their spunky, alcohol-fueled vitality and its subsequent humor value. Watching them try to sneak beer into football games, talk loudly about sexual experiences that they almost had, and study by way of leaving their book on a table and wandering off talking on a cell phone brought back fond memories of yesteryear. It also brought back memories of yesterday, but that's what the Law School Maturity Regression Syndrome will do to you. (I say this while holding my prom ticket as proof).

Tensions between the undergrads and myself reached all started while I was in the reading room having an IM chat about Bork-ian jurisprudence - that's code for chatting about which law students are borking each other. I laughed out loud involuntarily and was shushed with the kind of rage generally only reserved for people who send out "take me off this list too" e-mails. For laughing. By a guy straining with squinted eyes on a panicked face holding a book that looked, seriously, like a children's guide to the animal kingdom. He could have rented *Jumanji* and rode the curve to a B, as I did with *All the President's Men* and my entire journalism degree. I was minding my own business and trying my best not to learn about interpleader - successfully, by the way, as I think I put on the exam that it's a Vin Diesel movie in which he's a renegade process server about to deliver some cold study justice. And then I'm getting shushed by a 19-year old looking up from a *National Geographic*?

Now I study in a late night coffee shop, home of drunken undergraduate drama in the wee hours of the morning. In two weeks I've seen four first dates, one breakup over accusations of cheating



*Yelling incoherently and clearly too drunk to walk under her own power, an undergrad is helped through the Quad by friends.*

("You called me back on her phone!" was the indictment) and more than one instance of someone being kicked out for being too drunkenly sociable. It rules.

So I get home from studying in the wee hours of the morning to find that the undergrads have invaded my bedroom. Aurally. (No homonym intended.) Now that April's lukewarm weather is here and I can blissfully sleep with my bedroom window open, I'm forlornly reminded that I live near what is either a fraternity house or a group home for people with extreme hearing deficiencies who use loud swear words the way the Smurfs used "smurf."

The noise and language don't really bother me; rather, it's their human rights abuse of one house guest or roommate that saddens me on a nightly basis. I am referring to the plight of one unfortunately-named after his parents' favorite 12-letter expletive, whom I will call "FutherMocker."

They really don't like this FutherMocker guy. They threaten him: "I'll kill you, FutherMocker!" They taunt him with his evidently limited physical movement: "Step up, FutherMocker!" "Get back here, FutherMocker!" FutherMocker must speak in a voice too low for their hearing disability to pick up, as they often ask him "What was that, FutherMocker? What did you say?" Poor FutherMocker must also have an easily confused identity, as the other day, I went up to these guys to straighten their mussed and turned-up collars. They looked at me all mad and called me "FutherMocker!" I was like, "I know that guy. He lives on my street!"

I want to go down there and put an end to it - at least take the kid aside and tell him to legally change his name to "BrotherTrucker" or something. But I can't afford to do too much pro bono work. I have an entire third year of law school coming up that I'll need to pay for somehow.

Which brings us to the source of my animosity towards the kids: jealousy. Undergrads get more time to hang out, better football tickets, and they seem to spend money as if their parents were footing the bill or something. Where do these guys get money for clothes? I understand the importance of looking good, but let's be honest, guys. We're in Ann Arbor, Michigan. The locals here think Prada is the correct Czech pronunciation of "Prague." You'll get more comments wearing an NPR shirt than DKNY. \$200 sunglasses just aren't that exciting in a town where the rich people dress like ex-hippies because, well, they're ex-hippies. Relax, kids. Buy some Wrangler Jeans,

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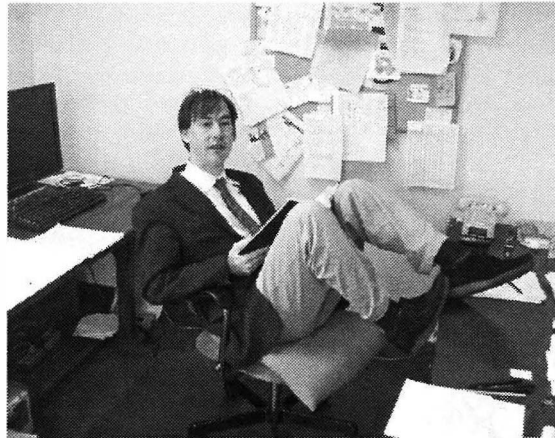
school, so I'm sort of snobbish in that regard. I wanted to be at a good institution. Two. I wanted a law school that has a top-flight radiation cancer center, and beggars can't be choosers when looking for both of those. So, it was one of about four cities we were really hoping to be in, so that worked out well. Some weren't hiring, Stanford had just tenured a bankruptcy guy. I was excited by Ronald Mann and J.J. White here, and really liked the fact that the faculty here seemed very cross-disciplinary. I like the fact that Rich Friedman does history and evidence together. I have some ancillary interests, some Canadian stuff, some comparative stuff, and so that seems interesting to me, right? Some places would say "that's distracting from your bankruptcy work" but here it's seen as a complement to my work, and so I feel coddled and embraced here, whereas I would have been shunned elsewhere.

**RG: What was it about bankruptcy that lured you in?**

JAEP: Oh, the human drama of utter collapse! I quip that my wife does oncology and I do bankruptcy because we're both exceptionally optimistic people. I think that I like bankruptcy because on the one hand it's a very statutorily complex, multifaceted, substantive field of law, like corporate law but with more moving parts. I've always liked procedure, so that complexity appeals. On the other hand, it's really one of the last refuges of equity in the legal system, right? We gussy it up with all these statutory provisions, but at the end of the day the court makes the best it can of a messy situation, and there's an enormous amount of discretion granted to our bankruptcy institutions to just "make the best you can of it."

So there's rich ground for thinking about what it is we want to do, what is fair, getting people to suspend their rights to collect their money for some sort of

greater good. I suppose it's quasi-socialist, so it appeals to the Canadian in me. You can do it on the individual person level and the mega-corporation level and some of the same concerns are there, and



I like that. I don't know how many other fields are like that. Maybe tax.

**RG: Most of the people who take secured transactions don't know what one is on the first day...**

JAEP: ...and distressingly many on the last day...

**RG: ...and bankruptcy doesn't have a reputation for being dynamic, either. How do you interest students in those classes?**

JAEP: I don't wear pants. I have tremendous enthusiasm toward it, and I think if you show that to students, interspersing real life examples, show that this is a vibrant field of law, you can overcome their, whatever you want to call it, pedagogical prejudices, like this is going to be a boring subject.

With my vast experience of two years at U of M I've found discussions can get quite animated where students can see the vitality of the law, the drama of the law, when they see how it just boils down to greed and fighting and strategy. I think that resonates with humans, there is something behind the code, person A fighting person B, for money, and I think students can identify with not having

money. We do try to strip away preconceptions of paradigmatic relationships of debtor vs. creditor. In bankruptcy, you see that there will be negative elements on both sides, and if you do a bankruptcy practice you'll be doing both debtor and creditor work. You have to see things from both sides of the spectrum. It's not like when you go to Man & Man, PC, large firm in Chicago, to do employment stuff, where 99 times out of 100 you'll be doing exclusively employer defense; you do both sides. That's an answer to both questions, to why I'm interested in it, and how I think it relates to students.

**RG: Do you see yourself as more research or teaching focused, and how important do you think they should be related in academia as a whole?**

JAEP: As an untenured professor, I devote 97% of my time to my scholarly writing, which is the most important thing to me, and to any academic legal institution. \*pause\* Other members of our faculty, with whom I may or may not agree, think the function of a faculty is to operate as a diversified portfolio, so you should have people who are really into writing, people who are really into teaching, those who are really into writing model laws, or university operations, and you put them all together. You shouldn't disproportionately weigh one type over the other type, and it is wildly optimistic to think you'll get someone who's a star on all counts. Myself excluded of course.

Whether I agree with that theory or not, I'm not sure I would put myself into one of those expertise categories yet. I think it's too early in my career. I enjoy my writing, I'm getting emails on my writing from people in Austria, and just came back from Sydney where I was accosted by someone from Melbourne who said, "oh, I read your paper and have the following thoughts on it," so that leads me to believe that at least within the context

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of the bankruptcy world, I'm contributing to the academic endeavor.

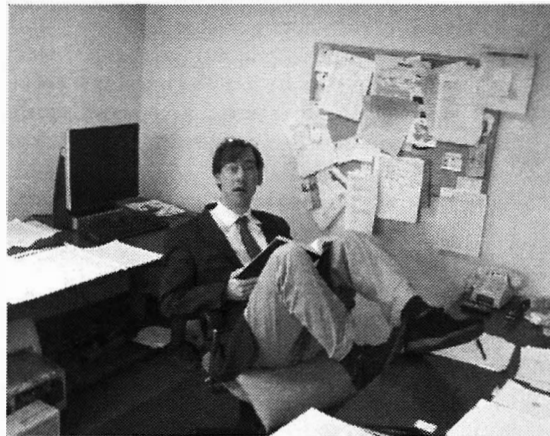
In terms of teaching, I got a nice email from a guy in Texas who's doing bankruptcy, and said he's very happy with his career choice that he made based on our class. Now I can't really say I've cured anyone's cancer, so I'm not on the same magnitude as my wife, but it's gratifying, an email like that. I do nothing for the university as an institution. I think I'm a loss-leader for the (grins).

**RG: So is international bankruptcy your main interest, or is there something you'd like to teach a seminar in?**

JAEP: Well, I teach contracts, which I had a hoot with this year, and I'm working on a project with Professor Ben-Shahar, which has made me more enthusiastic than I initially was as someone who came from a practical background toward the discipline of law and economics. That's the benefit of being at an institution like this, where you have such a rich and brilliant faculty that can make you think about new things. We're doing a study right now about how contracts are formed, and how there are certain barriers to contract formation, "stickiness" as we call them, that lock you into kind of status quo defaults. If there's a template used for purchase and sale agreements, it might be difficult to get out of that default rule, and not just direct like "it costs me \$5 to have a lawyer change this" but some sort of cognitive bias or psychological pressure, or norm, that says that you're punished if you deviate from that status quo. I like that theory, and now we're trying to flesh it out and see if we can detect that in eBay, to see if we can detect a deviance penalty when you put forward an unexpected option.

I don't know if you count that as different from bankruptcy, but I don't perceive myself doing a seminar on mass torts anytime soon. There's a bunch going on with bankruptcy and a federal

courts mess right now, which I might write an amicus brief for. I don't know if I'd teach a seminar – my friend Professor Richard Primus taught a seminar a couple years ago and called it the Seminar of Death, because he couldn't get students



to talk, and found it uncomfortable for the first little while. So I'm not knocking down the doors to do a seminar, but the best advice I got on them from my colleagues here is to teach one on the next paper you want to write, because then students will do all the readings and research and come up with interesting ideas for you. Maybe when I have to think of a new paper topic I'll design a seminar...

**RG: How long does the tenure process take?**

JAEP: They're a little coy, but I think it's a five- or six-year tenure track, with some wiggle room to give you extra time if you need it. Legally, I think I'm on a three-year contract, so I think they have a summary judgment at that period so if I've done anything embarrassing they can get rid of me. This leads me to believe there'll be another three year contract following, during which you go up for tenure. It's a complicated process – they get all these people to read your articles, and look at your stuff, and that process itself takes the better part of a year. It's sort of like Chapter 11, you can be "in tenure" for an extended period of months, and then hopefully you come out with confirmation.

**RG: You and Professor Primus clerked together in the U.S., and you clerked in Canada, – what were the differences?**

JAEP: Between Professor Primus and Canada?! Controlling apples to oranges, because I clerked for the circuit court of appeals in the U.S. and for the Supreme Court in Canada, I found the clerking process in the States more judge-centered, and found clerking in Canada more court-centered. We felt part of more of an institutional project in Canada. As a physical example, all the clerks in Canada had their offices up in the top in a place called the Clerkery, so my cubicle wasn't necessarily next to a cubicle for someone else for my judge, whereas in the States the model is based on "oh these are the clerks for

Justice so-and-so, and these are the clerks for Justice so-and-so," so I think as a consequence, there's more horizontal communication up there among the clerks, as opposed to more vertical communication just talking to your judge here. So that was a difference.

I think the Court in Canada, and now I'm projecting onto the Supreme Court of the United States which I don't know on a first-hand basis, but I think the Court in Canada is more collegial because it's less politicized. You don't see strategic voting alliances, and I don't think you can say, "oh, Bastarache and McLachlin are going to vote together" or "LeBel and Abella are together" – you just don't see that. Justices have known reputations, like "Justice L'Heureux-Dubé is very law and orderly," but not politicized.

I think in Canada, too, if you say Justice so-and-so is very liberal, I think in the States that gets conflated in the criminal justice context with libertarian, right, like strike down the police doing this, give defendants these rights, whereas in Canada it's much more progressive, like it's very liberal to proscribe certain forms of con-

**Continued on Page 18**



**POTTOW, from Page 17**

duct. You have an expansive feminist conception of what the criminal law entails, and that's very liberal, right? For example, hate speech laws in Canada are much more in conformity with norms across the world as opposed to the outlier United States. I think a lot of people in Canada would be surprised at how much speech is protected in the United States.

**RG: So why did you practice in the U.S. instead of Canada?**

JAEP: Well, yeah, the principal reason is that I was getting married! Seemed like a good idea to live with my wife. I'm licensed in both jurisdictions, was called to the bar in Ontario as well. As far as legal academics there's comparable schools to top-flight American schools, I'd say the University of Toronto holds its own. In fact, I think we poached Rob Howse from Osgoode Hall, another Canadian school. Jim Hathaway came from Osgoode Hall. Canadians are taking over this faculty – Ted Parson, Evan Caminker.... I've written on Canadian law, but no Canadian litigation.

**RG: How do Michigan students compare to students at other law schools that you've met or taught?**

JAEP: They seem less tight-assed than the people at Harvard that I knew, and I lived in New Haven, so I interacted with a smattering of Yale students there, who I found a good junk of them insufferable. In Hawaii I'd say the students were nice and friendly. The top students in Hawaii were comparable to the top students at Michigan, but the lower tier sort of fell off the charts. I'd be correcting remedial language stuff in their papers, and I don't think (cross my fingers) that I'd have that on one of my exams here.

In terms of respectful discussion, I find the students here pretty good in class – I think there's some anxiety and tight-assery, if that's a noun, here at Michigan, I just think it's better kept in check, or maybe only flares up around exams instead of during the entire course of the

semester. That's fine, I think it's a necessary byproduct of the ability and drive that probably brought most students here in the first place, a necessary evil of sorts. But the kids seem to play well together here! I don't know if those sorts of people are drawn to Michigan, or if something about it being a smaller-town environment with them tripping over each other at Leopold's and Ricks brings them together....I'd have to consult Professor Ellsworth on how to conduct a methodological survey to find out these things.

**RG: Any advice on law school for us?**

JAEP: Yeah, stop reading the newspaper and pay attention to the rest of this class!... I think I'm too young to pontificate to students, although that doesn't stop me in my classes. I'd say: Appreciate law school. When you look back even in a year's time from now, you'll realize what a glorious opportunity this was to explore new areas, to think openly and un-pressured, about normative directions in law opposed to what is the answer to the research memo you need to draft by next Friday. Experiment in an open and non-recrimination environment; you can say things in a law school you can't say in a meeting or certainly in a court. You're in graduate school, so you should enjoy yourself and meet as many interesting people from across the country and world as you can, because it's a great assembly of supremely talented people. Do your best not to waste it.

**RG: Standard question: compare 1Ls and upper-class students.**

JAEP: The first-years are smarter, and then they get dumber. No. The first-years first-semester still think like human beings, so you haven't stripped away their residual humanity and made them think like lawyers, so they have conceptions of morality, and fairness, and intuitions of justice which get re-calibrated. They have beliefs in normative absolutes before they descend into the quagmire of relativity. They have an enthusiasm that embracing the law brings, and I think that's wonderful, and I still have it, and I hope people keep that as long as possible. I realize some people just want their rub-

ber-stamp JD so they can go practice law, but everyone starts out that way, and it's a question of who you are and how long you keep it that way. I'm not making it a normative thing: go do your thing if you want to, and I'm a law professor, so I like it. Everyone's happy, right? The legal employment market works!

It's fun, though, to have everyone start out with that position because they're sharing an enthusiasm that I have as well. For some, it just goes into remission and you can recoup it again if you get animated by a specific legal issue, and you can see that again. The biggest difference is enthusiasm, openness, perhaps the naiveté.

**RG: The most famous question of the entire interview: where do you like to eat and drink in town?**

JAEP: Oh, well. Before I took this job I took a reconnaissance of the pubs here because I like to go read in a pub, but the problem with this town is that because it's so small I kept encountering students, which made things complicated. You can't read and write if you're being set upon by students. Arbor Brewing Company makes a good hoppy beer called the Sacred Cow I believe, or maybe it's the bitter. Ashley's has a great collection of taps and single malts, but it's too smoky so I can't stay there too long. Connor O'Neill's plays traditional music on Sundays, which I like. In terms of eating, it's surprising perhaps for a town of this size, but there are great Indian restaurants.

My wife and I like Shalimar best for the meats, but I like some of Raja Rani's vegetarian offerings. Madras Masala is a little too southern for me, but when I get the hankering for masala dosa, that's where I go. For posh, we like...oh...West End Grill's pretty good. Bella Ciao's pretty good. Students can't afford those...well, go to the Indian places. You guys can afford those.

*Biographical information courtesy of law.umich.edu.*



**DON'T ASK, from Page 3****Don't Ask, Don't Tell**

Like Milhizer, Belkin and Westcott urged students to think about it in a broader context. "The bottom line is, without "Don't Ask, Don't Tell, we wouldn't have Solomon," said Westcott.

Belkin discussed the significance of the military's policies. "The main problem with the "Don't Ask, Don't Tell" policy is what it says about citizenship," said Belkin. "In this country we value being allowed to identify ourselves, and this puts in place the definition of who is gay."

Expanding on Belkin's empirical research, Westcott brought a more personal side to the legal implications of the DADT policy. As Senior Counsel for Law and Policy for the Service Members Legal Defense Network, she offers legal support to individuals like Monica Hill who have been directly impacted by the "Don't Ask, Don't Tell" policy.

In contrast to Milhizer, Belkin and Westcott stressed the inevitability of change in the "Don't Ask, Don't Tell" law. Along with numerous other countries, Canada, Israel, Great Britain and Australia have lifted their bans on homosexual personnel in the military. Belkin indicated that this did not threaten unit cohesion or undermine military effectiveness in these countries, and also expressed a growing disapproval of the "Don't Ask, Don't Tell" policy in the United States and among military officials.

He recalled overhearing a general say recently, "It's such a damn waste when we fire someone because they are g-a-y!"

In addition, Westcott indicated that, ironically, gay discharges go down in times of military conflict, at the time unit cohesion is most necessary.

Gartner also recognized the increased disdain for the policy. "We had a really hard time finding speakers to defend the military's practices," she said. "We contacted military officials and a number of

professors who had supported "Don't Ask, Don't Tell" when it first passed, but no one was willing to come and defend the policy now."

**What's Next?**

Despite this evidence of changing attitudes, it does not appear that Congress will lift the ban on gays in the military in the near future. Westcott stressed the need for lobbyists to work for the appeal of "Don't Ask, Don't Tell. "If every University in the country got their paid lobbyists to lobby for its appeal in Congress, then maybe we'd make some progress."

She also advocated for law students to spend some time looking into these issues and to get involved.

We would like to see such support continued, as well as additional measures, such as a faculty resolution condemning the Solomon Amendment," said Gartner. "We, as LGBT students of Michigan Law School, want to know that our presence and participation in this academic community is one that is valued and appreciated by our professors."

**OPEN LETTER, from Page 6**

With the close of another school year and a long summer ahead of us, I think it is time to begin a cultural shift in our community with respect to this issue. Depression and other mental health issues should be talked about openly and without shame. Such a conversation should begin during the 1L orientation and continue throughout the school year. Administrators should educate students about available resources and work towards improving existing services. Faculty should be trained on spotting and dealing with students who struggle with these problems. Student organizations should sponsor workshops on healthy ways to deal with stress and depression.

I call upon all of us, students, faculty, administrators, and staff, to recognize that depression is prevalent throughout

our hallways and that we can do something about it. The first step is education: we must alert one another of its symptoms and reach out to those who are affected. We must then be able to direct one another to effective and accessible resources. Taking these steps will not only improve the lives of the individuals directly affected by mental illness, but also foster a more supportive and cohesive Law School community.

*Nadine Gartner is a 2L. E-mail comments about this article to rg@umich.edu.*

**STRANGELOVE, from Page 15**

study your *Tiger Beat* and stop yelling at each other.

I need at least another year to figure these guys out. I've heard the third year of law school being compared to an airport ride in the back of a smelly European taxi cab. You, the customer, don't know where your destination is, but you know you might not be taking fastest way there, and that you might be getting ripped off. But if you hate law school for driving up the fare on your trip to Juris Doctorland; wait until you start billing your clients by the hour. We're not taking the long the long way to the airport; we're learning how to drive the taxi ourselves someday. Even ignoring this, I'll take that third year. Maybe by then I'll have solved the mystery of why undergrads refuse to keep their voices – and collars – down.

*Michael Murphy is a 2L and Editor-in-Chief of Res Gestae. Over the summer, you can read his new writings at itwillfail.com and www.murphywriter.com. For the record, if ever in a persistent vegetative state, Mike would wish that his end-of-life decision be made by a joint session of Congress with a roll-call voice vote, "yay" or "nay." In case of a tie, the deciding vote is to be cast by action star Chuck Norris of TV's Walker, Texas Ranger. E-mail Mike at murphym@umich.edu.*







# Michigan Law Announcements

THE DEADLINE FOR  
DOWNLOADING AND  
TESTING  
ELECTRONIC  
BLUEBOOK (EBB)  
SOFTWARE IS:

**APRIL 19th  
at NOON**

[www.law.umich.edu/  
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## *Attention Graduating WLSA Members:*

Email Nicole D'Avanzo  
([nmd@umich.edu](mailto:nmd@umich.edu)) if you  
would like to have yourself  
removed from the general  
WLSA listserve and placed  
onto the alumni listserve.

On the alumnae listserve,  
you will only receive a  
"newsletter-type" email  
several times a year that will  
help us keep you updated  
about annual WLSA  
happenings and build our  
alumni base.

Thanks and  
Congratulations!  
WLSA is so proud of you!

## Headnotes Spring Concert!

*Thursday, April 21 (last day of classes) at  
7:00 pm  
Lawyers Club Lounge  
Stop by after the LSSS picnic and enjoy  
the music!*

### *Congratulations to the newly elected 2005-2006 ACS Board!*

*Jenne Klem, President  
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*If you are interested in the American Constitution Society,  
please e-mail Rob Stockman at [robstock@umich.edu](mailto:robstock@umich.edu)*

### **Announcing OPIS: Organization of Public Interest Students!**

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